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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/030,258	01/07/2002	Jouchim Charzinski	12758-048US1	8900
26161 7590 07/18/2008 FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022				
EXAMINER				
HALIYUR, VENKATESH N				
ART UNIT		PAPER NUMBER		
2619				
MAIL DATE		DELIVERY MODE		
07/18/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/030,258

**Applicant(s)**

CHARZINSKI, JOACHIM

**Examiner**

VENKATESH HALIYUR

**Art Unit**

2619

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 April 2008.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 (claim 4 is canceled) is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-3 and 5-14 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/S5108)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. The amendment filed on 04/17/2008 has been considered and therefore the rejection of claims communicated via office action of 10/17/2007 has been withdrawn. However a new ground(s) of rejection has been made in view of Berl et al and a newly found reference Gillett. Rejection follows.
2. Claims 1-14 are pending in the application. Claim 4 is canceled.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3, 5-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berl et al [US Pat: 5,940,390] in view of Gillett [US Pat: 5,627,837].

Regarding claims 1,7, Berl et al in the invention of "Mechanism for conveying data prioritization information among heterogeneous nodes of a computer network" disclosed a method for use in transmission of data packets, the data packets comprising

packet headers that include priority information (**priority field, item 916 of Fig 9A, col 10, lines 46-65**), the priority information identifying the data packets as high priority data packets (**high priority packets transmitted over high priority session, Fig 7**) or as low priority data packets (**low priority packets transmitted over low priority session, Fig 7, col 6, lines 23-59**), the method comprising: transmitting the data packets via at least one of a first transmission line (**TCP session for high priority packets, item 732 of Fig 7**) and a second transmission line (**TCP session for low priority packets, item 738 of Fig 7**), the second transmission line being redundant to the first transmission line, the data packets being transmitted in accordance with Internet Protocol (**col 8, lines 40-67, col 9, lines 1-20**); wherein transmitting the data packets comprises: in a device (**node, item 600 of Fig 7**), identifying which of the data packets are low priority data packets and which of the data packets are high priority data packets based on the priority information (**based on priority set in the packet header**), transmitting the high priority data packets identified by the device via the first transmission line (**high priority TCP session, Fig 7**); transmitting the low priority data packets identified by the device via the second transmission line (**low priority TCP session, Fig 7, col 9, lines 45-67, col 10, lines 1-36**) but fails to disclose switching transmission of the high priority data packets from the first transmission line to the second transmission line if there is a problem on the first transmission line and discarding low priority packets when high priority packets are transmitted via the second transmission line. However, Gillett in the invention of "Apparatus and Method for Suppressing Protection Switching in a Digital Communication System in the Event of an Error Burst" disclosed a method for switching

high priority data (**high priority traffic**) over the high priority transmission path (**4HP of Figs 7a/b**) to the low priority transmission path (**4LP of Figs 7a/b**) in the event of a fault on the high priority transmission path and discarding low priority data packets (**low priority traffic**) sent over the low priority transmission path to transmit high priority data packets via the high priority transmission path (**col 11, lines 14-61**). Therefore it would have been obvious for one of ordinary skill in the art at the time the invention was made to include the method of switching high priority data over the high priority transmission path to the low priority transmission path if there is a fault on the high priority transmission path and preempt low priority data packets sent over the low priority transmission path to transmit high priority data packets via the high priority transmission path as taught by Gillett in the system of Berl et al to switch transmission of the high priority data packets from the first transmission line to the second transmission line if there is a problem on the first transmission line and discarding low priority packets when high priority packets are transmitted via the second transmission line. One is motivated as such in order to switch high priority packets over the redundant transmission line in the event of the failure of the first transmission line to deliver high priority data packets to satisfy QoS requirement.

Regarding claims 2-3,10, Berl et al disclosed that the priority information is in a TOS of at least some of the packet headers (**col 12, lines 1-5**) and further disclosed that prior to switching only low priority packets are transmitted via the second transmission line (**low priority TCP session, col 10, lines 1-28**).

Regarding claim 5, Berl et al disclosed allocating high priority data packets (**high priority TCP session, Fig 7**) and low priority data packets (**low priority TCP session, Fig 7**) for transmission via the first and second transmission lines based on predetermined utilizations of the first and second transmission lines (**col 12, lines 6-13**).

Regarding claims 6,11, Berl et al disclosed that the first and second transmission lines comprise junction lines (**col 4, lines 61-67, col 5, lines 1-4, col 6, lines 34-59**).

Regarding claims 8,13, Berl et al disclosed that the first and second transmission lines (**TCP sessions**) are associated with first and second queues (**high and low priority queues, col 10, lines 1-7**) respectively and wherein the predetermined utilizations of the first and second transmission lines correspond to fill levels of the first and second queues, respectively and disclosed that the first and second queues comprise first and second buffers (**items 714, 718 of Fig 7, col 11, lines 55-67**).

Regarding claim 9,12, Berl et al disclosed a system for use in transmission of data packets, the data packets comprising packet headers that include priority information (**priority field, item 916 of Fig 9A, col 10, lines 46-65**), the priority information identifying the data packets as high priority data packets (**high priority packets transmitted over high priority session, Fig 7**) or as low priority data packets (**low priority packets transmitted over low priority session, Fig 7, col 6, lines 23-59**), the system comprising: a filter (**item 800 of Fig 8**) to receive the data packets, the filter being configured to identify which of the packets are low priority packets and which of the packets are high priority packets based on the priority information, and to output data packets (**col 10, lines 17-35**); a first queue to receive high priority data packets

output by the filter (**high priority queue, item 712 of Fig 7**); a second queue to receive low priority data packets output by the filter (**low priority queue, item 718 of Fig 7**); and a switch configured to direct the high priority data packets from the first queue to the first transmission line (**TCP session for high priority packets, item 732 of Fig 7**); direct the low priority data packets from the second queue to second transmission line (**TCP session for low priority packets, item 738 of Fig 7**), the second transmission line being redundant to the first transmission line (**col 8, lines 40-67, col 9, lines 1-20**); (**col 9, lines 45-67, col 10, lines 1-7**) but fails to disclose re-direct high priority data packets from the first queue to the second transmission line if there is a problem on the first transmission line and discarding low priority packets after high priority packets are redirected to the second transmission line. However, Gillett disclosed a method for switching high priority data (**high priority traffic**) over the high priority transmission path (**4HP of Figs 7a/b**) to the low priority transmission path (**4LP of Figs 7a/b**) in the event of a fault on the high priority transmission path and discarding low priority data packets (**low priority traffic**) sent over the low priority transmission path to transmit high priority data packets via the high priority transmission path (**col 11, lines 14-61**). Therefore it would have been obvious for one of ordinary skill in the art at the time the invention was made to include the method of switching high priority data over the high priority transmission path to the low priority transmission path if there is a fault on the high priority transmission path and preempt low priority data packets sent over the low priority transmission path to transmit high priority data packets via the high priority transmission path as taught by Gillett in the system of Berl et al to switch transmission

of the high priority data packets from the first transmission line to the second transmission line if there is a problem on the first transmission line and discarding low priority packets when high priority packets are transmitted via the second transmission line. One is motivated as such in order to switch high priority packets over the redundant transmission line in the event of the failure of the first transmission line to deliver high priority data packets to satisfy QoS requirement.

Regarding claim 14, Berl et al disclosed that the data packets are transmitted in accordance with Internet Protocol (**col 6, lines 34-48**).

### ***Response to Arguments***

5. Applicant's argument, see remarks filed on 04/17/2008 with respect to the rejection of claims 1-3, 5-14 have been fully considered and are persuasive. Therefore, the rejection of claims communicated via office action of 1/19/2007 has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of a newly found reference.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies i.e. the comparison of TOS value greater than a threshold value as in para 0009 and 0010 of the specification are not recited in the rejected claim(s). Although the claims



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are interpreted in light of the specification, limitations from the specification are not read into the claims.

### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications should be directed to the attention to Venkatesh Haliyur whose phone number is 571-272-8616. The examiner can normally be reached on Monday-Friday from 9:00AM to 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wing Chan can be reached @ (571)-272-7493. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (571)-272-2600 or fax to 571-273-8300.

7. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197(toll-free).

/Venkatesh Haliyur/

Examiner, Art Unit 2619

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/Edan Orgad/

Supervisory Patent Examiner, Art Unit 2619